

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
JOSEPH C. MURRAY,)
d.b.a. Murray Construction)
Company, and ROBERT L.)
PETERMEYER,)
Appellants,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 78-126

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty for outdoor burning allegedly in violation of respondent's Sections 8.02(3) and 8.02(5) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Seattle, Washington on September 18, 1978. Hearing examiner William A. Harrison presided. Respondent elected an informal hearing pursuant to RCW 43.21B.230.

Appellants, Joseph C. Murray and Robert L. Petermeyer, appeared and

1 represented themselves. Respondent appeared by and through its attorney,
2 Keith D. McGoffin. The proceedings were not recorded.

3 Witnesses were sworn and testified. Exhibits were examined. From
4 testimony heard and exhibits examined, the Pollution Control Hearings
5 Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent, pursuant to PCW 43.21B.260, has filed with this Board a
9 certified copy of its Regulation I containing respondent's regulations
10 and amendments thereto of which official notice is taken.

11 II

12 Joseph C. Murray is a building contractor who does business as
13 "Murray Construction Company". On the date in question, March 28, 1978,
14 he had contracts for construction of several homes near 53rd Avenue West
15 in Lynnwood, Washington. Mr. Murray had warned the persons working on
16 those homes not to burn construction debris.

17 III

18 On the date in question, however, Mr. Murray was not present at the
19 building site. His employee and foreman, Robert L. Petermeyer, serving
20 as acting foreman, was working in the basement of one Murray house
21 while, out of his view, a fire was started near another Murray house
22 by one known only as "Roy the sider". On the day in question, Roy was
23 engaged by Murray Construction Co. to apply cedar siding. Although Murray
24 paid him by the foot of siding installed on this day, Roy had previously
25 been paid on an hourly basis and had alternated between the two methods
26 of compensation. He had performed a variety of building work on Murray

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nomes in the past. The siding which he applied on this day was purchased by Murray, who was fully entitled to direct Roy's actions while on the Murray job site.

The subject fire contained construction debris including plastic and cardboard from packaging of building materials. The fire was two to three feet in diameter.

IV

While on routine patrol, respondent's air pollution inspector detected the fire and observed that the dimensions and the contents of it were as described above. The inspector asked who was in charge, Mr. Petermeyer was summoned, and he gave his name as the person "responsible". There had been no permit issued for the fire either by respondent air agency or the local (Lynnwood) fire department. Respondent failed to prove that a fire department permit was required.

Respondent's inspector issued formal Notices of Violation at the scene. The fire was shortly extinguished and appellants later received a Notice of Civil Penalty in the amount of \$250 citing Sections 8.02(3) (prohibited materials) and Section 8.02(5) (violation of a rule or regulation of a governmental agency having jurisdiction over the fire) of respondent's Regulation I. Appellants appeal the civil penalty.

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board comes to these

FINAL FINDINGS OF FACT,
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1 CONCLUSIONS OF LAW

2 I

3 The Legislature of the State of Washington has enacted the following
4 policy on outdoor fires:

5 It is the policy of the state to achieve and maintain high
6 levels of air quality and to this end to minimize to the
7 greatest extent reasonably possible the burning of outdoor
8 fires. Consistent with this policy, the legislature declares
that such fires should be allowed only on a limited basis
under strict regulation and close control. RCW 70.94.740.

9 Pursuant to this and other legislative authority, the respondent has
10 adopted its Regulation I, Section 8.02 which provides in relevant part:

11 It shall be unlawful for any person to cause or allow any
12 outdoor fire:

13 (3) containing garbage, dead animals, asphalt, petroleum
14 products, paints, rubber products, plastics, or any substance
other than natural vegetation which normally emits dense smoke
or obnoxious odors; or

15 (5) in violation of any applicable law, rule or regulation
16 of any governmental agency having jurisdiction over such fire.

17 Because there was no proof that a fire department permit was required,
18 and because no permit could issue for a fire containing prohibited
19 materials, Section 8.02(5) was not violated. Because the fire contained
20 prohibited materials, Section 8.02(3) was violated.

21 II

22 The legal relationship between the appellant, Joseph C. Murray, and
23 "Roy the sider" was one of master and servant, and the fire was started
24 by Roy within the scope of his employment. There was no such relation-
25 ship between appellant Robert L. Petermeyer and Roy, nor did Petermeyer
26 have reason to expect that Roy would start the fire if left alone. We

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1 therefore conclude that appellant Murray "caused or allowed" the fire,
2 in the language of Section 8.02 supra, and thereby violated that section
3 while appellant Petermeyer did not.

4 III

5 Because appellant Murray had warned persons working on the site
6 against burning of construction debris, his penalty should be partially
7 suspended.

8 IV

9 Any Finding of Fact which should be deemed a Conclusion of Law
10 is hereby adopted as such.


11 From these Conclusions, the Board enters this

12 ORDER

13 The \$250 civil penalty is affirmed as to appellant Murray and reversed
14 as to appellant Petermeyer, provided, however, that \$150 of the civil
15 penalty is suspended as to appellant Murray on condition that he does
16 not violate respondent's regulations for one year from the date of his
17 receipt of this Order.

18 DONE at Lacey, Washington, this 10th day of October, 1978.

19 POLLUTION CONTROL HEARINGS BOARD

20 
21 DAVE J. MOONEY, Chairman

22 
23 CHRIS SMITH, Member

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25
26
27 FINAL FINDINGS OF FACT,
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